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19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 U.S. EQUAL EMPLOYMENT
22 OPPORTUNITY COMMISSION,

23 Plaintiff,

24 vs.

25 MEATHEAD MOVERS, INC., and
26 DOES 1-10, inclusive,

27 Defendants.
28

Case No.: 2:23-cv-08177-DSF-AGRx

**PLAINTIFF EEOC'S REPLY IN
SUPPORT OF MOTION FOR
BIFURCATION OF DISCOVERY &
TRIAL**

Hearing: April 29, 2024 at 1:30 PM

Honorable Dale S. Fischer
United States District Judge

TABLE OF CONTENTS

I. INTRODUCTION	1
II. THE FACTS CORRECTED	2
III. ARGUMENT	4
a. The EEOC’s Theory is Intentional Discrimination in Hiring.	4
b. Bifurcation is Warranted in Pattern-or-Practice Cases.	6
c. The Pattern-or-Practice Method of Proof is Available to ADEA.	6
d. Bifurcation is More Efficient for Pattern-or-Practice Framework.....	9
e. Bifurcation Promotes Settlement and Limits Juror Confusion.	10
f. Meathead will not be Prejudiced and Bifurcation is not Premature.....	11
g. Meathead’s Seventh Amendment Argument Fails.....	12
IV. CONCLUSION	12

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bostock v. Clayton Cnty., Ga.</i> , 590 U.S. 644 (2020).....	8
<i>Costa v. Desert Palace, Inc.</i> , 299 F.3d 838 (9th Cir. 2002), <i>aff'd</i> , 539 U.S. 90 (2003).....	8
<i>Desert Palace, Inc. v. Costa</i> , 539 U.S. 90 (2003).....	7
<i>Doyle v. City of Medford</i> , 512 F. App'x 680 (9th Cir. 2013).....	4
<i>EEOC v. Bass Pro Outdoor World, L.L.C.</i> , 826 F.3d 791 (5th Cir. 2016)	7
<i>Gifford v. Atchison, Topeka and Santa Fe Ry. Co.</i> , 685 F.2d 1149 (9th Cir.1982)	10
<i>Gross v. FBL Fin. Servs., Inc.</i> , 557 U.S. 167 (2009).....	7, 8
<i>Heath v. Google LLC</i> , 345 F. Supp. 3d 1152 (N.D. Cal. 2018).....	5, 8
<i>Int'l Bhd. of Teamsters v. United States</i> , 431 U.S. 324 (1977).....	1, 6, 8, 9
<i>Jones v. Okla. City Pub. Sch.</i> , 617 F.3d 1273 (10th Cir. 2010)	7
<i>McKennon v. Nashville Banner Publ'g Co.</i> , 513 U.S. 352 (1995).....	5
<i>Meacham v. Knolls Atomic Power Lab'y</i> , 554 U.S. 84 (2008).....	5
<i>Robinson v. Metro–N. Commuter R.R. Co.</i> , 267 F.3d 147 (2d Cir. 2001)	9, 10, 11

1	<i>Shelley v. Geren</i> ,	
2	666 F.3d 599 (9 th Cir. 2012)	8
3	<i>Smith v. City of Jackson</i> ,	
4	544 U.S. 228 (2005)	5
5	<i>Teutscher v. Woodson</i> ,	
6	835 F.3d 936 (9 th Cir. 2016)	12
7	<i>Tex. Dept. of Cmty. Affairs v. Burdine</i> ,	
8	450 U.S. 248 (1981)	8
9	<i>Thompson v. The Weyhauser Corp.</i> ,	
10	582, F3d. 1125 (10 th Cir. 2009)	8
11	<i>Thiessen v. Gen. Elec. Capital Corp.</i> ,	
12	267 F.3d 1095 (10 th Cir. 2001)	5, 6
13	<i>W. Air Lines, Inc. v. Criswell</i> ,	
14	472 U.S. 400 (1985)	5
15	<i>Wal-Mart Stores, Inc. v. Dukes</i> ,	
16	564 U.S. 338 (2011)	7
17	<i>Westendorf v. W. Coast Contractors of Nev., Inc.</i> ,	
18	712 F.3d 417 (9 th Cir. 2013)	7
19	<i>Wynn v. Nat’l Broad. Co.</i> ,	
20	234 F. Supp. 2d 1067 (C.D. Cal. 2002)	10
21	Statutes	
22	29 U.S.C. § 626(c)(1)	11
23	29 U.S.C. § 626(c)(2)	12
24	42 U.S.C. §2000e-5	7
25	Other Authorities	
26	29 C.F.R. § 1625.7(d)	5
27	1966 Advisory Com. Note to FRCP 42(b)	6
28		

1 **I. INTRODUCTION**

2 Meathead has long held itself out as a “student-athlete” moving company,
3 composed of “young and energetic student-athletes.” Its own hiring data shows it
4 overwhelmingly hires people under 40, excluding older qualified workers. The
5 EEOC’s lawsuit asserts a single claim alleging a pattern-or-practice of disparate
6 treatment in hiring and seeks bifurcation under the often-used *Teamsters* framework.
7 Courts agree this method of proof is available to ADEA plaintiffs; there is no anti-
8 bifurcation presumption in this jurisdiction.

9 Bifurcation is more efficient and less prejudicial than the alternative. Meathead
10 seeks to distract from the primary issue – its own employment practices – and instead
11 argues for a single “unified” trial trying to justify likely hundreds of individual hiring
12 decisions when it rejected an older applicant in favor of one under 40. If discovery is
13 not bifurcated, Meathead intends to subpoena records from and depose every class
14 member to try to pick them off one-by-one, based on information it did not know when
15 it rejected them. In contrast, the EEOC’s proposal narrows the issues to properly focus
16 on Meathead’s hiring practices to determine whether age discrimination was “the
17 company’s standard operating procedure the regular rather than the unusual practice,”
18 supporting a rebuttable presumption of discrimination. *Int’l Bhd. of Teamsters v.*
19 *United States*, 431 U.S. 324, 336, 362 (1977).

20 Meathead is not prejudiced by bifurcation of discovery or trial. To defend each
21 hiring decision, Meathead need look no further than its own application records and
22 hiring personnel for the information it knew at the time it rejected older applicants. The
23 EEOC has already disclosed 100+ rejected applicants in the protected age group
24 (“PAG”) and produced the majority of its investigative file, including hundreds of
25 questionnaire responses from applicants. Bifurcation does not preclude Meathead from
26 deposing witnesses. Rather, it incentivizes deposition of witnesses who can help prove
27 or disprove that the hiring practices are discriminatory.

28 EEOC’s practical motivation is to structure responsibly this large hiring case,

1 consistent with well-reasoned decisions that have endorsed bifurcation in pattern-or-
2 practice cases. Meathead fails to provide input on how to structure this large case,
3 defaulting to immediate, unstructured, unlimited discovery into the circumstances of
4 likely hundreds of rejected applicants in the PAG, before producing applications
5 needed to identify the class, and a unitary trial where one jury must evaluate pattern-
6 or-practice evidence alongside individual hiring decisions for 100+ class members. In
7 a pattern-or-practice case like this, where the first issue is whether a pattern or practice
8 exists and individual claims are secondary, Meathead's approach defies common sense
9 and would take much longer than the 8 months of discovery and 10-14 days of trial
10 Meathead proposed. (ECF No. 27 at 27:13, 27-002). Accordingly, the Court should
11 grant the EEOC's motion for bifurcation of discovery and trial.

12 **II. THE FACTS CORRECTED**

13 Meathead incorrectly contends that "the EEOC's factual support is entirely
14 speculative at this stage." The EEOC's case is already well-supported by direct,
15 statistical, and anecdotal evidence of discriminatory intent. Meathead's "founding
16 principle is to support student-athletes working their way through college in pursuit of
17 their own American dream, and that will never change." (Supplemental Declaration¹
18 of Andrea Ringer at ¶3 ("Decl."), Ex. 1). According to the CEO, Meathead was born
19 from the founding brothers' "vision of young and energetic student athletes delivering
20 a unique customer service experience." (Decl. ¶4, Ex. 2). "Since the beginning,
21 Meathead Movers [has] allow[ed] young people to build their own work schedules
22 around their athletic and academic commitments, allowing many to successfully work
23 their way through college." (*Id.*)

24
25 ¹ The EEOC included a declaration supporting its Motion to show what the EEOC
26 intends to prove and is largely based on review of the investigative file. Supporting
27 documents that Meathead suggests the EEOC publicly file are employee lists, copies
28 of employment applications, and job interview notes, among other things. Much of
this seems unnecessary for a bifurcation motion. However, in light of Meathead's
objection, and in response to misstatements made in the Opposition, a supplemental
declaration with supporting documents is attached.

1 Meathead’s advertisements depict images of its young “student-athletes” and its
2 employee and hiring data show it consistently hires young people to the exclusion of
3 older qualified workers. For instance, in 2017, this “small business” employed over
4 700 people, and just 0.3% were 40 or older, according to Meathead. (Decl. ¶5, Ex. 3).
5 Meathead’s recruitment and hiring practices maintain its young workforce. It instructs
6 employees to recruit at gyms, colleges, and places they “hang out” because employees
7 know the “unique culture” at Meathead. (Decl. ¶6, Ex. 4). Older applicants’ ages are
8 often obvious given the application form seeks graduation dates and employment
9 history. (Decl. ¶8, 15, Ex. 6). Interviewees are screened out with subjective questions
10 like, “What is your spirit animal?” (Decl. ¶9, Ex. 7). Culture fit is required for hire, and
11 young age is part of culture fit at Meathead. (Decl. ¶10, Ex. 8).

12 These practices are part and parcel of Meathead’s founding vision and have
13 resulted in it intentionally discriminating against actual and prospective applicants age
14 40 and older. Meathead seeks to distract and mislead the Court by arguing the EEOC
15 is trying to avoid discovery, that the class size is speculative, and that after years of
16 investigating, the EEOC has never tried to, or found, any aggrieved individuals. ***To set***
17 ***the record straight:*** Before any discovery responses were due, the EEOC disclosed
18 over 100 potential claimants (all applicants 40+ rejected by Meathead) and numerous
19 anticipated witnesses (Meathead employees) to the alleged discrimination. (Decl. ¶
20 14). The EEOC has already contacted hundreds of applicants, inquired regarding their
21 qualifications and experience applying at Meathead, and produced such
22 communications from its investigation to Meathead. (Decl. ¶12). The EEOC also
23 produced 2575 pages from its investigative file, including over 340 questionnaire
24 responses² from applicants. (Id. at ¶15, 12, Ex. 10). The remainder of its investigative
25 file, the employment applications, will soon be produced. EEOC is in the process of
26 determining whether another 660 applicants are also in the PAG. (Id. at ¶16). The

28 ² Meathead’s assertion that the EEOC has never contacted applicants is demonstrably
false. (Opp. at 12). The EEOC never stated this. (Decl. ¶12-13)

1 foregoing information about applicants was gleaned from the limited applications
2 provided in the investigation.³

3 While the exact class size is uncertain, its large size is not “speculative.” EEOC
4 estimated a class size of 500, not “thousands” as Meathead contends. (Opp. at 10.) The
5 estimate is based on paper applications produced by Meathead in 2018. Meathead
6 complains the EEOC has not identified the class members, but Meathead declined
7 EEOC’s request for early production of applications from which the EEOC will
8 identify most of the class and has produced no applications in the litigation. EEOC
9 promptly requested applications from 2017 to present. (Decl. ¶21). Regardless of
10 bifurcation, however, the EEOC will promptly disclose the identities of all those it is
11 able to identify as in the PAG and expects Meathead to do the same. To the extent
12 Meathead has been “trying to get information about any alleged victims,” the EEOC
13 provided this information when Meathead requested it in 2022, before the litigation.
14 (Opp at 11; Decl. ¶18).

15 Meathead has served discovery requests regarding individual applicants, and
16 expressly stated its intent to subpoena every class member. (Decl. ¶19-20, Ex. 11).

17 **III. ARGUMENT**

18 **a. The EEOC’s Theory is Intentional Discrimination in Hiring.**

19 Meathead repeatedly and incorrectly contends the EEOC has pled four theories
20 of discrimination. The EEOC is the Plaintiff and asserts a single claim alleging
21 Meathead maintains a pattern or practice of *intentional* age discrimination in hiring,
22 including recruitment and advertising. Its claim is disparate treatment.

23 Meathead’s “principal affirmative defense,” “reasonable factor other than age”
24 (RFOA), is not a defense to disparate treatment. Meathead contends this defense is
25 fact-intensive such that bifurcation is improper. But the RFOA affirmative defense is
26 not available in a disparate treatment case. *Doyle v. City of Medford*, 512 F. App’x 680,

27
28 ³ In 2018 Meathead produced about 4500 paper applications from 2016 to mid-2018.
It has not produced electronic applications or applications after mid-2018.

681 n.1 (9th Cir. 2013); 29 C.F.R. § 1625.7(d). RFOA is a defense to disparate impact, which is not a claim here, and not a “safe harbor from liability” for disparate treatment. *Smith v. City of Jackson*, 544 U.S. 228, 238-39 (2005); *see Meacham v. Knolls Atomic Power Lab’y*, 554 U.S. 84, 102 (2008) (RFOA clause designed to leave leeway for decisions with effects that correlate with age). Disparate impact requires a neutral policy that has an adverse impact on a protected group. *See Meacham*, 554 U.S. at 101. Meathead’s practices, such as the “Student Athlete Movers” moniker, are evidence of discriminatory animus not neutral practices. Meathead cannot create a disparate impact claim that has not been pled.

Even if the RFOA defense was available, Meathead’s self-serving justifications for the young age of its employees, including that moving positions are physical jobs, are reminiscent of the intent behind the ADEA. *W. Air Lines, Inc. v. Criswell*, 472 U.S. 400, 409 (1985) (ADEA meant to address persistent age discrimination despite “wide range of individual physical ability regardless of age” such that many older persons “perform at levels equal or superior” to younger persons). Meathead’s persistent belief that older workers are not as strong or not as interested in its jobs is based on the sort of unlawful stereotypes the ADEA was premised upon. Further, to the extent Meathead contends it needs discovery on applicants’ qualifications, Meathead cannot justify failure to hire applicants based on information it did not have at the time it failed to hire them. *See McKennon v. Nashville Banner Publ’g Co.*, 513 U.S. 352, 362 (1995) (refusing to bar recovery in ADEA action based on after-acquired evidence). Such information may be relevant to damages, but it is not a defense to liability.

Meathead’s argument based on fact-intensive defenses does not distinguish this case from any other where courts granted bifurcation. *See, e.g., Thiessen v. Gen. Elec. Capital Corp.*, 267 F.3d 1095, 1107 (10th Cir. 2001) (“highly individualized” defenses not the “focal point until the second stage of trial”); *Heath v. Google LLC*, 345 F. Supp. 3d 1152, 1174-75 (N.D. Cal. 2018) (rejecting argument “individualized defenses would need to be tried in a phase one trial as well as its contention that Plaintiffs’ claims are not suited for a *Teamsters* trial at all”).

b. Bifurcation is Warranted in Pattern-or-Practice Cases.

The EEOC agrees bifurcation of discovery and trial is not, and should not be, the norm in run-of-the-mill civil litigation.⁴ Pattern-or-practice litigation is not the norm. *See Thiessen*, 267 F.3d at 1106. Pattern-or-practice hiring cases often involve dozens, hundreds, or thousands of persons not hired due to a common protected ground. Here, if the employer's standard operating procedure was to deter and reject older applicants because of age, it would be inefficient to first parse through every individual hiring decision before determining what the standard hiring practices are and whether they are discriminatory. Accordingly, courts across the country bifurcate pattern-or-practice employment cases because it furthers convenience, promotes judicial efficiency, and reduces juror confusion. Motion at 11-19. EEOC urges the Court to consider the weight of the authority, as "it is important that [bifurcation] be encouraged where experience has demonstrated its worth," as it has in pattern-or-practice employment cases. 1966 Advisory Com. Note to FRCP 42(b).

c. The Pattern-or-Practice Method of Proof is Available to ADEA.

Meathead confuses theories of liability with methods of proof and gives short shrift to well-reasoned decisions analyzing the *Teamsters* framework, bifurcation, and the ADEA. The case law around this narrow issue has largely developed outside of the Ninth Circuit, but circuit and lower courts across the country agree, even post-*Gross*, the pattern-or-practice framework is available in ADEA cases.

Meathead asserts that, because Title VII contains a subsection authorizing pattern-or-practice claims (Section 707), and the ADEA does not, pattern-or-practice claims are not available here. However, Section 706 of Title VII does not include the term "pattern or practice," yet federal courts have long agreed the EEOC and private litigants may allege a pattern or practice under Section 706. 42 U.S.C. §2000e-5; *see*,

⁴ Meathead misstates the standard for bifurcation in the Ninth Circuit. (Opp. at 13.) Neither *Hangarter* nor *Zahedi* conclude there is a high burden of proving the efficacy of bifurcation, and both are factually distinct.

1 *e.g.*, *EEOC v. Bass Pro Outdoor World, L.L.C.*, 826 F.3d 791, 800 (5th Cir. 2016);
2 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 352 n.7, 366-67 (2011).

3 Meathead relies heavily on *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009)
4 for its argument that the EEOC cannot proceed via the pattern-or-practice framework.
5 *Gross* does not stand for such a broad proposition. *Gross* held that, unlike Title VII,
6 the ADEA does not authorize a “mixed-motive” discrimination claim. *Id.* at 175. The
7 *Gross* decision is grounded in the 1991 changes to Title VII adding “mixed-motive”
8 provisions. *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 93-95 (2003). If an individual
9 proves a “mixed motive” violation under Section 2000e-2(m), and the employer
10 asserts the “mixed motive” affirmative defense under Section 2000e-5(g)(2)(B), the
11 burden shifts to the employer to prove “it would have taken the same action absent the
12 impermissible motivating factor.” *Id.* at 94-95. Because Congress did not add similar
13 “mixed motive” provisions to the ADEA, the *Gross* court held the “mixed motive”
14 option was not available, and therefore “[t]he burden of persuasion does not shift to
15 the employer to show that *it would have taken the action regardless of age, even when*
16 *a plaintiff has produced some evidence that age was one motivating factor in that*
17 *decision.*” *Gross*, 557 U.S. at 174-75, 180 (emphasis added). *Gross* did not change the
18 causation standard; it reaffirmed *Hazen Paper*, 507 U.S. 604, 610 (1993), holding that
19 in ADEA cases, “but-for” causation is required. *Gross*, 557 U.S. at 176-77. (“[W]e
20 have previously held that the burden is allocated in this manner in ADEA cases.”).⁵

21 While the Ninth Circuit has not squarely addressed the application of the
22 pattern-or-practice framework to ADEA actions, circuit courts and lower courts agree
23 that it does. *See* Mot. at 15-16. Post-*Gross*, courts agree the *Teamsters* framework still

25 ⁵ However, “but for” causation does not mean “sole cause.” *Jones v. Okla. City Pub.*
26 *Sch.*, 617 F.3d 1273, 1276-78 (10th Cir. 2010) (rejecting argument that *Gross*
27 required age be the sole cause of the adverse action); *see also*, *Westendorf v. W.*
28 *Coast Contractors of Nev., Inc.*, 712 F.3d 417, 422 (9th Cir. 2013) (In Title VII
retaliation case, plaintiff “had to show that her protected conduct was a but-for
cause—but not necessarily the only cause—of her termination”).

1 applies to the ADEA, distinguishing *Gross* as an *individual* disparate treatment case
2 involving mixed-motive. *See Thompson v. The Weyhauser Corp.*, 582, F3d. 1125,
3 1130 -31 (10th Cir. 2009) (*Gross* did not affect presumptions in *Teamsters*); *Heath*, 345
4 F. Supp. 3d at 1168, 1173 (rejecting argument *Gross* prohibited application of pattern-
5 or-practice framework).

6 This is unaffected by *Shelley v. Geren*, which held that “nothing in *Gross*
7 overruled [precedent] utilizing [the *McDonnell Douglas*] framework to decide
8 summary judgment motions in ADEA cases,” and then reaffirmed established
9 precedent that the *McDonnell Douglas* framework does not apply at trial. *See* 666 F.3d
10 599, 607-08 (9th Cir. 2012) (citing *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 855 (9th
11 Cir. 2002), *aff’d*, 539 U.S. 90 (2003)). In so holding, neither *Shelley* nor *Gross* alter
12 the burden of persuasion for ADEA claims (i.e., non-mixed-motive); the burden of
13 persuasion is the same for ADEA claims as it is for Title VII: it remains on the plaintiff
14 at all times. *See Tex. Dept. of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981)
15 (“ultimate burden of persuading the trier of fact” “remains at all times with the
16 plaintiff”). *Gross*’ requirement of “but-for causation” does not render the pattern-or-
17 practice framework unavailable, especially given its functional equivalence to Title
18 VII’s “because of” requirement. *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 656
19 (2020) (citing *Nassar*, a Title VII retaliation case, and *Gross*).

20 Nothing in the pattern-or-practice model of proof is inconsistent with proof of
21 “but for” causation. If the EEOC prevails in Stage I, Meathead is entitled to present
22 evidence that its individual decisions were not based on age and/or were based on
23 legitimate reasons, and a jury instruction that if age was not a determinative factor as
24 to a particular hiring decision, the jury must find in favor of Meathead, as to that person.
25 Only after Meathead has been deemed a wrongdoer that engaged in a pattern or
26 practice of discrimination does any burden shift to Meathead.

27 **d. Bifurcation is More Efficient for Pattern-or-Practice Framework.**

28 Bifurcation is approved in pattern-or-practice cases because it makes discovery
and trial more convenient and manageable, reduces juror confusion and other

1 prejudice, and promotes settlement. *See* Mot. at 17-27.⁶ Meathead’s citations to
2 *Raymond v. Spirit* and *Welcker v. Smithkline* are factually distinct and do not support
3 its argument that bifurcation is improper. (Opp. at 18-19).

4 Meathead repeatedly focuses on the class size to suggest that bifurcation is not
5 efficient. The class size is a relevant consideration, addressed *supra* in Section II.
6 Without Meathead’s applications (or electronic data for online applications), however,
7 the EEOC can only provide the information it has gleaned from the limited applications
8 Meathead provided during the EEOC’s investigation and estimates based on that
9 information. To the extent Meathead suggests that bifurcation would only be proper
10 after the EEOC has identified a threshold number of claimants as in *Darden*
11 *Restaurants* or *Nebco*, see Opp. at 20, the EEOC does not object to bifurcation
12 contingent upon formal identification of 50 or more class members, provided that
13 Meathead immediately produces its application records to ensure quick identification.

14 Meathead contends, without support⁷, that there is significant overlap between
15 phase one and two of the *Teamsters* framework such that bifurcation would result in
16 duplicative testimony. Liability and damages in pattern-or-practice hiring cases are
17 distinct, separable issues that lend themselves well to bifurcation. Mot. at 18-19.
18 Individualized defenses and testimony are not necessary until Stage II. Individuals who
19 testify at Stage I will be utilized to show Meathead’s pattern or practice, not to prove

21 ⁶ Meathead mischaracterizes the standard for bifurcation in the Ninth Circuit, stating
22 there exists a “strong anti-bifurcation presumption” based on two unpublished district
23 opinions. (Opp. at 20). *Medtronic* and *Robinson* are factually distinct and do not
24 support such a conclusion.

25 ⁷ Meathead’s citations are factually distinct and do not support the conclusion that
26 there is overlap in pattern-or-practice cases. (Opp. at 23). *Zahedi* is a copyright
27 infringement case where the court bifurcated discovery but declined to bifurcate trial
28 at that time because its standard practice was to wait until the final pretrial
conference. *Hangarter* involved bifurcation of contract and punitive damages in an
unfair competition case. *Miller* involved bifurcation of a Title VII and intentional
infliction of emotional distress claim. *Aerojet* was an individual breach of contract
and unfair competition case. None sought bifurcation under *Teamsters*.

1 Meathead rejected them because of age. *See Robinson v. Metro-N. Commuter R.R.*
2 *Co.*, 267 F.3d 147, 18 (2d Cir. 2001).⁸

3 Meathead also repeatedly argues the EEOC has multiple theories such that
4 bifurcation would be inefficient. As explained *infra*, the EEOC has 1 claim, disparate
5 treatment. To the extent Meathead cites *Wynn* for the proposition that the EEOC brings
6 a separate, “‘deterred-applicant’ theory,” the *Wynn* court is a district court opinion
7 where plaintiffs claimed to be deterred due to “pervasive ageist policies in the
8 [television] industry.” *Wynn v. Nat’l Broad. Co.*, 234 F. Supp. 2d 1067, 1097 (C.D.
9 Cal. 2002). The Court agreed the pattern-or-practice method of proof applies to ADEA
10 claims but went on to state deterred applicants must show applying would be futile,
11 such as statistical evidence showing a “glaring absence” of persons in the protected
12 group. *Id.* at 1097-99. The EEOC’s pattern-or-practice evidence will include evidence
13 sufficient to conclude that applying would be futile, such as statements by hiring
14 managers that Meathead only hires young people and statistical evidence of the
15 absence of older workers hired. *See Gifford v. Atchison, Topeka and Santa Fe Ry. Co.*,
16 685 F.2d 1149, 1154 (9th Cir.1982).

17 **e. Bifurcation Promotes Settlement and Limits Juror Confusion.**

18 Juror confusion is a real concern here, and a pattern-or-practice finding would
19 have meaningful settlement implications. The cases cited by Meathead do not support
20 its position that juror confusion is irrelevant. *Hangarter* does not even mention juror
21 confusion, and in *Bos. Sci. Corp.*, the court stated juror confusion is “a valid concern”
22 then denied bifurcation on several grounds. *Id.* at *4.

23 **f. Meathead will not be Prejudiced and Bifurcation is not Premature.**

24 Meathead’s contention that bifurcation would be prejudicial fails. By
25

26 ⁸ Meathead cites *Robinson* and *Satchell* to argue there is overlap between the
27 “liability stage” and the “remedial phase.” (Opp. at 23). *Robinson* stands for the
28 opposite; it observed that “remedial phase” was a “misnomer” because it also
implicates liability issues as to individuals, and the *Satchell* court acknowledged this
was merely a dispute of “semantic[s]” (not overlap of issues). *Satchell* at *1.

1 Meathead’s reasoning, the EEOC is on a “fishing expedition” for victims, and
2 bifurcation is *never* warranted because it will *always* result in prejudice from “unfair
3 delay” and added expense. The EEOC is not on a fishing expedition for evidence or
4 victims. The EEOC filed this enforcement action alleging discriminatory hiring
5 practices; applications are relevant to prove or disprove hiring discrimination. The
6 putative class is people in the PAG who were not hired. EEOC seeks to notify them of
7 the case and afford them a fair opportunity to participate if they choose. That is not a
8 “fishing expedition”; it is EEOC’s obligation as its lawsuit extinguishes the rights of
9 individuals harmed by the alleged discrimination. 29 U.S.C. § 626(c)(1).

10 Limiting discovery and trial first to pattern-or-practice evidence will expedite
11 resolution of this case. *See Robinson*, 267 F.3d at 159 (presumption “substantially
12 lessen[s] each class member's evidentiary burden”). Meathead need look no further
13 than its own employment records and hiring personnel to “gather evidence from
14 percipient witnesses to defend itself.” (Opp. at 28). The issue is what was motivating
15 Meathead’s decisionmakers, and what was in their minds, not the applicant.

16 The prejudice to the EEOC if bifurcation is denied is obvious: rather than
17 conducting targeted discovery and trial as to Meathead’s employment practices, the
18 case will be immediately and irreparably bogged down by burdensome individual-
19 specific discovery requests from Meathead, before the EEOC has had the opportunity
20 to inform the putative class and identify class members. Meathead has already
21 propounded dozens of discovery requests seeking 10 years of employment history,
22 criminal background, physical skills, and other information about every class member,
23 and stated its intent to subpoena and depose every claimant. (Decl. ¶19, Ex. 11)

24 The EEOC would be forced to put on the entire case to a jury who will hear both
25 the pattern-or-practice evidence and the stories of 100+ class members to ultimately
26 make a finding as to alleged pattern or practice of discrimination and also as to every
27 single person. This will *significantly* delay the start of trial and lengthen the actual trial.
28 Even if the class was ultimately a fifth of what the EEOC projects, to conduct 100
claimant depositions and depose a decisionmaker for each would require 2 depositions

1 per week, for 2 years. Coupled with discovery needed on pattern-or-practice issues, 2
2 years is conservative. Allowing time for dispositive motion briefing, a “unitary” trial
3 could not reasonably begin before 2027.

4 Bifurcation will not result in “multiple motion practices, costs to recall
5 witnesses, and potentially duplicative experts.” As to motion practice, the opposite
6 appears more likely. Meathead has already approached EEOC a few times about
7 discovery motions it wants to take to the magistrate, which primarily concern claimant
8 and damages discovery. (Decl. ¶22). As to experts, the experts at each stage are in
9 different areas. Stage I experts are likely to be for statistical analysis of hiring data;
10 Stage II experts are likely to be for calculation of lost earnings. No overlap is expected.

11 **g. Meathead’s Seventh Amendment Argument Fails.**

12 Meathead argues trial cannot be bifurcated because all legal claims must be
13 resolved before any equitable claims. The legal issues that must be resolved are those
14 that “turn on common issues of fact.” *Teutscher v. Woodson*, 835 F.3d 936, 944 (9th
15 Cir. 2016). Injunctive relief in Stage I is tied to any pattern-or-practice finding.

16 Meathead also claims bifurcation of trial is proscribed because it has a right to
17 a jury trial on liquidated damages, and because the Seventh Amendment proscribes
18 bifurcation where there is substantial overlap in the issues. First, there is a right to a
19 jury trial “in private actions,” but the statute is silent as to public actions like this one.
20 29 U.S.C. § 626(c)(2). Second, the Motion makes clear there is no Seventh
21 Amendment issue given there is little overlap between Stages I and II. *See* Mot. at
22 26-27.

23 **IV. CONCLUSION**

24 Bifurcation of this ADEA pattern-or-practice enforcement action is necessary,
25 will increase efficiency, and avoid prejudice. The EEOC’s motion should be granted.
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1 Dated: April 18, 2024

Respectfully submitted,

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3 U.S. EQUAL EMPLOYMENT
4 OPPORTUNITY COMMISSION

5 By: /s/ Andrea E. Ringer

6 Andrea E. Ringer

7 Trial Attorney
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L.R. 11-6.2 Certificate of Compliance.

Pursuant to L.R. 11-6.2, the undersigned, counsel of record for Plaintiff EEOC, certifies that Plaintiff EEOC's Reply Memorandum in Support of its Motion for Bifurcation of Discovery and Trial contains 12 pages, which complies with the page limit set by the Standing Order for Cases Assigned to Judge Dale S. Fischer, dated January 17, 2024 (ECF No. 15).

Dated: April 18, 2024

Respectfully submitted,

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

By: /s/ Andrea Ringer

Andrea Ringer
Trial Attorney